

Title	<b>Claim and Litigation Procedure (rule 6.201)</b>
Summary	The proposed new rule would (1) establish the procedure for acting on claims for money or damages against the Judicial Council, the Administrative Office of the Courts, the courts, and the judicial officers and employees of those entities, and (2) authorize the Office of the General Counsel and the Judicial Council's Litigation Management Committee to settle claims and litigation and pay judgments, after consultation with the affected judicial branch entity.
Source	Litigation Management Committee and the Office of the General Counsel
Staff	Sue Hansen, Supervising Attorney, 415-865-7707, Sue.hansen@jud.ca.gov
Discussion	<p>Under recently enacted Assembly Bill 2321 (Hertzberg), which becomes effective January 1, 2003, the Judicial Council is the board empowered to act on claims for money or damages against the council, the Administrative Office of the Courts (AOC), the courts, and the judicial officers and employees of those entities, in accordance with the procedure provided by rule of court. The legislation also permits the council to authorize a council committee or an employee of the AOC to act on claims and actions involving those specified judicial branch entities.</p> <p>As a general rule, a person bringing a claim or lawsuit for money or damages against a public entity or a public employee must comply with the requirements of the California Tort Claims Act (TCA).<sup>1</sup> The TCA prohibits, with certain exceptions, such a lawsuit unless the person first presents a written claim to the public entity. The TCA distinguishes between local public entities and the State, and sets forth different requirements for presenting claims to the former and the latter. Historically, claims against a trial court were presented to the county in which that court was located. Because of the relatively recent separation of the trial courts from county governments, the application of the TCA to the trial courts had become less clear.</p> <p>Under the TCA, claims against a public entity are presented to a "board," and the "board" acts on those claims. Section 811.9 of the</p>

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<sup>1</sup> Gov. Code, §§ 810–996.6.

Government Code, which took effect in January 2001, provides that the Judicial Council is responsible for representation, defense, and indemnification of trial courts and trial court judicial officers and employees. As a result of the passage of AB 2321, the TCA now explicitly identifies the Judicial Council as the “board” for purposes of claims against judicial officers and “judicial branch entities.”<sup>2</sup>

AB 2321 establishes that the council acts on claims against trial courts, judicial officers, and court employees. For consistency, it establishes parallel requirements for the appellate courts, the Judicial Council, the AOC, and employees of those entities.

As of January 1, 2003, section 915(c) of the Government Code will describe how an individual who desires to present a claim against a judicial officer or judicial branch entity should do so. For example, a person wishing to present a claim against a trial court will be instructed to deliver or mail it to the court executive officer, and a person with a claim against the AOC will be instructed to deliver or mail it to the Secretariat of the Judicial Council.

By adding section 912.7 to the Government Code, AB 2321 requires the council to act on claims against a judicial branch entity or judge “in accordance with the procedure that the Judicial Council provides by rule of court.” That section also allows the council to delegate its functions as the board to a council committee or AOC employee for purposes of responding to claims.

Three other new sections of the Government Code permit the council to authorize any council committee or any AOC employee to perform the council’s functions under a particular section or part of the TCA. Section 935.8 specifically allows the council to authorize by rule of court a council committee or AOC employee to adjust and pay a claim. Section 948.1 allows the council to authorize by rule of court a council committee or AOC employee to “settle, adjust, or compromise any pending action.” Section 965(c) allows the council to authorize a council committee or AOC employee to pay claims, settlements, or judgments.

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<sup>2</sup> “Judicial branch entities” are defined in section 900.3 of the Government Code to include the superior courts, courts of appeal, the Supreme Court, the Judicial Council, and the AOC. The requirements for actions against public employees, as set forth in sections 950 through 951 of the Government Code, will apply to actions against employees of those judicial branch entities, without any additional amendment.

Proposed rule 6.201 specifically sets out the procedure under which the OGC acts on claims affecting the council, the AOC, the courts, and the judicial officers and employees of those entities. Some of the provisions in the proposed rule are similar to those described in section 912.6, which lists the ways in which the board of a local public entity may act on claims. The proposed rule is consistent with the current processing of claims by OGC attorneys, who have familiarity with court operations, judicial branch defenses (such as judicial immunity), and other court-specific factors that affect the merits of a claim. The rule thus ensures efficiency and timeliness in the handling of claims, allowing them to be resolved promptly, consistent with the law.

The proposed rule also confirms that the OGC has authority to settle claims and litigation and to pay judgments, after consultation with the affected judicial branch entity, where payments would be less than \$50,000. Similarly, the proposed rule confirms that the Judicial Council's Litigation Management Committee can authorize payment of settlements and judgments, after consultation with the affected judicial branch entity, where payments would be \$50,000 or more.

The proposed rule is consistent with the rules adopted in December 2000, pursuant to section 811.9. Rule 6.800 requires the Office of the General Counsel (OGC) to manage and administer a program for investigating and resolving all claims and lawsuits affecting the trial courts. Trial courts are required to forward claims and lawsuits to the OGC for handling. Among other responsibilities, the OGC is required to select and direct outside counsel, in consultation with the affected trial court and any represented individuals. In addition, the OGC is required to (1) make settlement decisions, in consultation with the affected trial court and any individual defendant, where payments would be less than \$50,000, and (2) make recommendations to the Litigation Management Committee regarding proposed settlements requiring payments of \$50,000 or more, or involving important policy issues. Rule 6.14 describes the oversight role of the Litigation Management Committee regarding such proposed settlements. (A copy of rule 6.800 and 6.14 is attached.)

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Attachments